

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Case No. 17-17361- (AIH)
Richard M. Osborne)	
)	Chapter 11
)	
Debtor)	Judge Arthur I. Harris

**Objection to Amended Third Application and Amended Fourth and Final Application
of Frederic P. Schwieg, Esq., Attorney at Law
for Approval of Compensation and Reimbursement of Expenses
as Counsel for Debtor and Debtor in Possession**

Daniel M. McDermott, United States Trustee for Region 9, pursuant to his administrative responsibilities, has reviewed the *Third Application of Frederic P. Schwieg, Esq., Attorney at Law for Approval of Compensation and Reimbursement of Expenses as Counsel for Debtor and Debtor in Possession* and the *Fourth and Final Application of Frederic P. Schwieg, Esq., Attorney at Law for Approval of Compensation and Reimbursement of Expenses as Counsel for Debtor and Debtor in Possession* (“Applications”) and has the following objections to the Applications.

1. This Court has jurisdiction to hear the above-captioned Motion.
2. Pursuant to 28 U.S.C. §586, the United States Trustee is charged with the supervision and administration of all cases commenced under Chapter 11, Title 11, United States Code. This duty is part of the United States Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee*

v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that United States Trustee has “public interest standing” under 11 U.S.C. §307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990). Pursuant to 11 U.S.C. §307, the United States Trustee has standing to be heard on any issue pending before this Court.

3. On December 17, 2017, Richard M. Osborne (“Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. On July 3, 2019, the case was converted to a case under chapter 7 of the Bankruptcy Code and Kari B. Coniglio was appointed as chapter 7 trustee (“Trustee”).

4. 11 U.S.C. §330 states after notice and a hearing, the court may award to a professional reasonable compensation for actual, necessary services rendered and reimbursement for actual and necessary expenses. The United States Trustee believes payment of the fees and expenses requested in the Applications is premature at this time and believes certain services provided no benefit to the estate.

5. **Timing of payment:** The Applications requests an allowance of fees and expenses as administrative expenses against the estate and requests immediate payment by the Chapter 7 Trustee. The United States Trustee objects to the immediate payment of any chapter 11 administrative expenses. Typically in a converted chapter 7 case, claims are paid after administration of the assets, after approval of the Trustee’s Final Report, and are paid consistent with the priority distribution scheme established by the Bankruptcy Code under 11 U.S.C. §726. Section 726 allows for chapter 11 administrative expenses to be paid after chapter 7 administrative expenses are paid. Since it is unknown at the time what the chapter 7

administrative expenses will be or that there will be sufficient funds to pay all chapter 7 administrative expenses, it would be premature to pay any chapter 11 administrative expense and would be inconsistent with section 726.

6. **Benefit to the Estate:** The Applications request reimbursement for fees for drafting a plan. All entries relating to preparation and drafting of a plan appear to be in 10 days prior to the July 3rd hearing on the United States Trustee's motion to convert and the motion of First National Bank of Pennsylvania's motion for a trustee. At that point, the case had been pending for 18 months. First National Banks's motion was filed on December 11, 2018. The plan was never filed. The United States Trustee objects to any payments for fees for the preparation of a plan since these services provided no benefit to the estate.

7. The Application also requests reimbursement for Debtor's attempt to hire Inglewood and Associates as valuation expert which was filed on June 11, 2019. Debtor was aware and on notice that the value of his business interests were an issue in the case. Debtor's attempt to hire a valuation expert at such a late stage in the case provided no benefit to the estate and fees associated with the retention should be denied.

WHEREFORE, the United States Trustee respectfully requests the Court consider the above objections and enter an Order consistent with this Objection and for such other relief as

this Court deems appropriate.

Respectfully submitted,

DANIEL M. MCDERMOTT
United States Trustee, Region 9

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Certificate of Service

I certify that on August 20, 2019, a true and correct copy of *Objection to Fee Application* was served: Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

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